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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,023	02/12/2002	Alexander van der Lely	8553/251	8401

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT PAPER NUMBER

3644

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,023

Applicant(s)

VAN DER LELY ET AL.

Examiner

Yvonne R. Abbott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51, 52, 88 and 89 is/are allowed.
- 6) ☒ Claim(s) 53-57, 63, 68, 69, 71-73, 76, 85, 87 and 90-93 is/are rejected.
- 7) ☒ Claim(s) 58-62, 64-67, 70, 74, 75, 77-84, 86 and 94-96 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

It should be noted that on page 2 of the Amendment filed 6/19/03, it states "please cancel claims 1, 2, and 38-40", however, in the *Remarks*, it states that "36-40 have been cancelled". The latter statement was confirmed with Applicant's representative on 6/30/03, and the following Office Action treats claims 36-40 as being cancelled. Also, Applicant should note that the *Remarks* (p.10) incorrectly state that claim 87 depends from claim 51.

Response to Arguments

1. Applicant's arguments filed June 19, 2003 have been fully considered but they are not persuasive.

Applicant asserts that the claimed invention is distinguished from the prior art because it is directed to measuring "relatively momentary stresses", and that such stresses are different in physiologically degree from those disclosed in the prior art. Also Applicant states on page 11 of the *Remarks* that "the primary purpose of the apparatus for milking animals in the Van der Lely reference is to determine when an animal is sick or in heat", and on page 13, that "there is no suggest of utilizing the apparatus and method of Mottram et al. to determine any stress at all". Applicant appears to be attempting to distinguish illness from stress.

To rebut Applicants arguments, the examiner notes that Applicant has disclosed in the Specification (page 5) that a stress parameter that can be measured to indicate momentary stress, for example, includes heartbeat. It is maintained that the Van der Lely reference ('190) discloses that a milking device is used in conjunction with a medical device for determining the blood pressure, heart beat, and temperature, etc. of the animal (Abstract).

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Mottram et al. discloses that the odor is measured to determine conditions or information regarding the animal's state of health. Furthermore, it is maintained that illness and heat are conditions of stress inasmuch as heartbeat, blood pressure, adrenaline levels, etc. can be raised. Thus, stress as defined by Applicant's specification and as commonly defined as a physical, chemical, or emotional factor that causes bodily or mental tension to alter an existent equilibrium, is a factor that is measured by both the Van der Lely and Mottram et al. references, and as such claims 53 and 90 are not allowable.

Claim Rejections - 35 USC § 112

2. Claim 56 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 56, "each milk quarter" lacks prior antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

a. A person shall be entitled to a patent unless –

b. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 53-57, 68, 69, 71-73, 76, 85 and 87 are rejected under 35 U.S.C. 102(b) as being anticipated by Van der Lely (5,816,190). Van der Lely disclose an apparatus for milking animals provided with a milk box (2) having a medical instrument (36) by means of which the blood pressure, the heartbeat, the temperature, etc. (all considered to be milk related data in that they are conditions of the milked cow) of an animal can be determined,

such parameters being indicators of stress; the data can be collected while the animal is in the milking compartment and the data is transmitted to a computer with memory where the physical state of individual animals can be stored so that historical data can be collected so that when a parameter measured by the instrument deviates from an average value inputted in the computer, this is printed on an attention list to alert or signal the farmer to inspect the animal, wherein the computer print-out is considered to be an alarm means; wherein the device is suitable for and adapted to measure the data before, during and after milking depending on when one wishes to examine the animal; the instrument provides output data indicative of specific conditions of the animal; and wherein the apparatus further comprises an animal identification system.

5. Claims 90, 92 and 93 are rejected under 35 U.S.C. 102(b) as being anticipated by Van der Lely ('190). Van der Lely discloses a process during which animals are milked, several factors including heartbeat, blood pressure and temperature (which are considered to be indicators of stress) of the animal are also measured and stored in a computer.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 53-57, 63, 71-73, 76, 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mottram et al. (5,697,326) in view of Van Den Berg et al. (5,873,323).

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Mottram et al. disclose a device which is capable of use in conjunction with a milking apparatus since it is disclosed that the apparatus may be fixed to a milking stall for routine testing and that the examination may be applied when an animal presents for milking, further characterized in that the device is provided with a stress measuring device in the form of an olfactory sensor which samples odours from the animals teat or exhaled breath from the nostrils animal to identify specific aspects of the animal condition, and which is therefore, capable of determining the degree of stress off an animal and supplying the stress measurement data to a storage device, wherein the device is suitable for and adapted to measure the data before, during and after milking depending on when one wishes to examine the animal; the sensor provides output data indicative of specific conditions of the animal. Van den Berg et al. teach a method of milking animals automatically while determining their physiological condition; the apparatus can include a sensor that works in conjunction with a computer which records and compares the data with other stored values (i.e. correspondence table), the results of the comparison being indicative of a physiological condition of the animal. Although it is not disclosed that the device of Mottram et al. itself stores the data, it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the electric circuitry of the device to record the sensor results as is taught by Van Den Berg et al. in order to develop a pattern of historical data which could be helpful in the treatment or utilization of the animal.

8. Claim 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Lely ('190). Although Van der Lely discloses that the measuring of stress related data occurs in the milking compartment during the milking process, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to also measure the parameters before or after milking to compare values, confirm the accuracy of the values if a value is outside of a particular range, or for purposes of historical data collection.

Allowable Subject Matter

9. Claims 51, 52, 88 and 89 are allowed.
10. Claims 58-62, 64-67, 70, 74, 75, 77-84, 86, 94-96 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

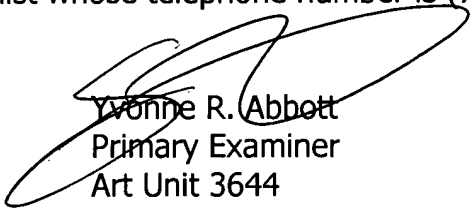
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on 7:30-5:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on (703)306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Yvonne R. Abbott
Primary Examiner
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